IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 130 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT ELECTRICITY BOARD

Versus

GAYATRI ICE FACTORY

Appearance:

1. Second Appeal No. 130 of 2001

MR NK MAJMUDAR for Petitioners No. 1-3

MR NILESH A PANDYA for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 21/12/2001

ORAL JUDGEMENT

Gujarat Electricity Board and others-appellants have filed this Second Appeal under Section 100 of the Civil Procedure Code against the judgement and decree dated 17.10.2001 passed by the Second Extra Assistant Judge, Vadodara, in Regular Civil Appeal No. 112 of

2001. The learned judge by the impugned order was pleased to dismiss the appeal and confirm the judgement and decree dated 4.5.2001 passed by the 7th Joint Civil Judge (S.D.), Vadodara in Regular Civil Suit No. 1844 of 1994 filed by the plaintiff (respondent herein). In this case the respondent-plaintiff had filed a Suit against the Gujarat Electricity Board and others and in that suit the learned trial judge has held that the bill issued by the Gujarat Electricity Board for a sum of Rs. 1,03,166.29 paise pursuant to the meter going slow is an incorrect bill issued by the Gujarat Electricity Board. It has been held by the learned trial judge that the plaintiff has not tampered with the meter and Gujarat Electricity Board has tried to harass the opponent-plaintiff in this behalf. The learned trial judge further held that there is no theft of electricity by the plaintiff.

2. Being aggrieved and dissatisfied with the aforesaid judgement and decree passed by the learned trial judge, the Gujarat Electricity Board preferred an appeal before the Second Extra Assistant Judge being Regular Civil Appeal No. 112 of 2001 who by his judgement and decree dated 17.10.2001 was pleased to dismiss the appeal and allow the Cross Objection filed by the plaintiff respondent. The learned appellate judge was pleased to confirm the judgement and decree passed by the lower court except on the count of interest.

3. Mr. Majmudar, learned advocate for the appellant has vehemently assailed the judgement of the trial court as well as the appellate court. He stated that the appeal raises the following questions of law:

"(A) Whether in the facts and circumstances of the case, both the courts below have committed substantial error in not appreciating the provisions of condition No. 34 of Conditions of Supply framed by the GEB?

(B) Whether in the facts and circumstances of the case, both the courts below have committed substantial error of law in not following the definition pertaining to theft/dishonest extraction of electricity as per Indian Electricity Act, 1910 and Indian Electricity Rules, 1956?

(C) Whether in the facts and circumstances of the case, both the courts have committed substantial error of law in not holding that it

was a case of theft/tampering with the meter in view of the definition in Indian Electricity Act, 1910?

4. Mr. Nilesh Pandya, learned advocate for the respondent has relied on Exh. 67, the report of the Gujarat Electricity Board which clearly set out that the plaintiff has not tampered with the meter and there is no theft committed by the plaintiff in connection with the consumption of electricity. He submitted that this evidence is an clinching evidence to prove that the plaintiff has not tampered with the meter and there is no theft of electricity. The aforesaid document completely supports the finding arrived at by the appellate court and the trial court and therefore the appeal does not raise any substantial questions of law. In view of the same, the second appeal is dismissed. No order as to costs.

(K.M. MEHTA, J)

(pkn)